



प्रधान आयुक्त का कार्यालय,
Office of the Principal Commissioner,
केंद्रीय जीएसटी अहमदाबाद दक्षिण आयुक्तालय
Central GST, Commissionerate- Ahmedabad South,
अपराध और अधिनिर्णय खंड, छठी मंजिल, अम्बावाड़ी, GST
भवन, अहमदाबाद ३८००१५.



6th Floor, O&A Section, GST Bhavan, Ambawadi 380015

निबन्धित पावती डाक द्वारा/ By REGISTERED POST A.D.

फा./सं./F.No. VI-CGST/4-24/O&A/Cargil/2021-22

DIN No. 20221064WS0000999AA5

आदेश की तारीख/Date of Order : 12-10-2022

जारी करने की तारीख/Date of Issue : 12-10-2022

द्वारा पारित / Passed by: Shri Marut Tripathi, JOINT COMMISSIONER

मूल आदेश सं./Order-In-Original No. 25/CGST/Ahmedabad South/JCMT/2022-23

यह प्रति उस व्यक्ति (यों) को, जिसके (जिनके) लिए यह आदेश जारी किया गया है, उसके(उनके) व्यक्तिगत उपयोग के लिए निःशुल्क प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

यदि कोई व्यक्ति इस आदेश से स्वयं को असंतुष्ट अनुभव करता है, तो वह इस आदेश के विरुद्ध आयुक्त(अपील), केन्द्रीय जीएसटी, केन्द्रीय जीएसटी भवन, आंबावाड़ी, अहमदाबाद-15 को प्रारूप GST APL-01 में अपील कर सकता है। उक्त अपील पक्षकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वारा प्राप्त करने की तारीख से दो माह के भीतर दाखिल की जानी चाहिए। इसपर रुपए 2.00/- केवल कान्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this order in Form GST APL-01 to Commissioner (Appeals), Central GST, Central GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad -15 within sixty days from date of its communication. The appeal should bear a court fee stamp of Rs.2.00/- only.

उक्त अपील सीजीएसटी/ एसजीएसटी नियम 2017 के नियम 108 के प्रावधानों के अनुसार फॉर्म संख्या GST APL-01 में दाखिल की जानी चाहिए।

The Appeal should be filed in form No. GST APL-01 in accordance with provision of Rule 108 of the CGST/SGST Rules 2017.

निर्णय की दो प्रतियाँ (उसमें से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए जिसके विरुद्ध अपील की गई है) अथवा उक्त आदेश की अन्य प्रति जिसपर रु 2.00/- का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

Copies of the Decision (one of which at least shall be certified copy of the order appealed against) or copy of the said Order bearing a court feestamp of Rs.2.00/-.

उप धारा के(1) तहत कोई अपील नहीं भरी जायेगी, जब तक कि अपीलकर्ता ने भुगतान नहीं किया है-

(1) पूर्ण रूप से, कर ब्याज जुर्माना शुल्क और दंड की राशि का ऐसा हिस्सा, जो आक्षेपित आदेश से उत्पन्न होता है जैसा की उसके द्वारा स्वीकार किया गया है ; और

(2) उक्त आदेश से उत्पन्न विवाद में कर की शेष राशि के दस प्रतिशत के बराबर राशि, (अधिकतम पच्चीस करोड़ रुपए के अधीन), जिसके सम्बन्ध में अपील दायर की गई है

[बशर्ते की धारा 129 की उप धारा (3) के तहत एक आदेश के खिलाफ कोई अपील दायर नहीं की जायेगी, जब तक कि अपीलकर्ता द्वारा पच्चीस प्रतिशत जुर्माना के बराबर राशि का भुगतान नहीं किया गया हो]

No appeal shall be filed under sub-section (1), unless the appellant has paid-

(a) In full, such part of the amount of tax, interest fine fee and penalty arising from the impugned order, as is admitted by him; and

(b) A sum equal to ten percent of the remaining amount of tax in dispute arising from the said order, [subject to a maximum of twenty five crore rupees] in relation to which the appeal has been filed.

[Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty five percent of penalty has been paid by the appellant]

संदर्भ/Reference : कारण बताओ सूचना फा.सं. /F. No. CGST/4-24/O&A/Cargil/2021-22 dated 29.03.2022 issued to M/s. Cargil India Private Limited GDN No. 01, Punjabi Estate, survey No. 899/1, Village-Mouza-Aslali, Taluka-Dascroi, Ahmedabad-382427.

BRIEF FACTS OF THE CASE

M/s. CARGILL INDIA PRIVATE LIMITED, situated at GDN NO- 01, PUNJABI ESTATE, SURVEY NO- 899/1, VILL/MOUZA-ASLALI, TAL-DASCROI, DIST-AHMEDABAD- 382427 at (hereinafter referred to as the said "Tax Payer"). They are at present holding GSTIN 24AAACC3269J1ZQ. The said Tax Payer filed TRAN-1 on 26.10.2017 and has taken transitional credit of Central Excise/Service Tax amounting to Rs. 1,19,04,179/- in their electronic Credit ledger under Section 140 of the CGST Act, 2017 read with rule 117 of CGST Rules 2017 [by entry 7A in table 7(a) of Tran-1] as under:

7 (a)	Amount of duties and taxes on inputs claimed as credit excluding the credit claimed under Table 5(a) (under sections 140(3), 140(4)(b) and 140(6) and 140(7))						
Invoice document	Input Type	Sl.No.	Details of inputs held in stock				
			HSN	Unit	Qty	Value (in Rs.)	Eligible Duties Paid (in Rs.)
7A. Where duty paid invoices (including Credit Transfer Document(CTD)) are available	Inputs	1	2807	OTH	28,340	1,26,909	15,279
		2	2809	OTH	1	41	4
		3	2835	OTH	90	15,341	1,917
		4	2907	OTH	1,670	7,45,127	93,141
		5	2909	OTH	53	39,034	4,879
		6	3204	OTH	729	3,46,909	43,364
		7	3206	OTH	2,000	3,24,000	40,500
		8	3215	OTH	193	4,61,905	57,738
		9	3302	OTH	92	1,44,760	18,095
		10	3403	OTH	1	3,703	630
		11	3404	OTH	1,211	1,52,244	17,307
		12	3802	OTH	1,50,131	36,66,938	4,58,766
		13	3815	OTH	3,222	19,58,772	2,44,846
		14	3823	OTH	4,16,275	2,01,89,324	25,23,665
		15	3824	OTH	18,102	22,36,742	3,65,637
		16	3901	OTH	47,987	40,83,702	5,10,462
		17	3910	OTH	97	76,869	2,257
		18	3914	OTH	2,200	2,73,900	34,237
		19	3919	OTH	1,76,654	9,11,734	1,11,369
		20	3920	OTH	79,112	1,49,85,294	18,66,185
		21	3921	OTH	13,809	4,74,971	58,171
		22	3923	OTH	6,14,466	29,95,899	3,80,606
		23	4016	OTH	12	28,330	4,387
		24	4819	OTH	2,73,964	44,58,968	2,68,674
		25	4821	OTH	15,62,053	27,82,283	3,46,428
		26	6403	OTH	265	2,73,923	16,435
		27	6806	OTH	2	3,400	317
		28	7019	OTH	45	1,15,473	14,434
		29	7204	OTH	172	85,255	10,657
		30	7210	OTH	29,062	19,03,561	2,37,945
		31	7304	OTH	350	2,95,750	36,969
		32	7310	OTH	4,62,300	13,19,561	1,59,597

		33	7326	OTH	6	14,344	2,442
		34	8402	OTH	1	5,014	626
		35	8405	OIT	1	14,672	1,834
		36	8406	OTH	10	1,30,359	16,294
		37	8413	OTH	43	4,24,412	64,565
		38	8414	OTH	2	5,31,500	30,688
		39	8418	OTH	8	39,454	4,250
		40	8421	OTH	555	1,51,900	18,987
		41	8423	OTH	2	74,400	9,300
		42	8474	OTH	1	95,000	11,875
		43	8477	OTH	1	9,206	1,150
		44	8481	OTH	43	3,74,720	46,840
		45	8483	OTH	3	6,96,945	87,118
		46	8484	OTH	105	10,26,423	1,07,651
		47	8486	OTH	6	1,91,694	23,961
		48	8503	OTH	46	2,28,806	28,600
		49	8504	OTH	1	1,90,000	21,698
		50	8506	OTH	10	10,328	427
		51	8523	OTH	1	50,494	4,914
		52	8536	OTH	2	45,336	8,492
		53	8537	OTH	1	41,467	3,780
		54	9025	OTH	10	32,246	4,030
		55	9026	OTH	49	3,67,606	39,866
		56	9027	OTH	1	15,000	1,875
		57	9031	OTH	2	1,18,110	14,763
		58	9032	OTH	10	1,22,334	13,970
		59	9033	OTH	17	91,785	11,473
		60	1901	OTH	621	15,73,643	1,96,705
	Inputs contained in semi- finished and finished goods	1	1901	OTH	108	1,33,779	16,722
		2	2809	OTH	88	5,580	950
		3	2907	OTH	3	1,338	167
		4	3204	OTH	175	83,472	10,434
		5	3206	OTH	181	29,357	3,670
		6	3802	OTH	22,905	5,52,270	69,034
		7	3824	OTH	481	55,719	9,481
		8	3901	OTH	15,690	13,34,986	1,66,873
		9	3910	OTH	11	2,405	301
		10	3919	OTH	41,055	2,25,262	28,158
		11	3920	OTH	17,701	33,48,275	4,18,534
		12	3921	OTH	238	96,827	12,103
		13	3923	OTH	3,84,438	38,20,295	4,79,925
		14	4819	OTH	2,65,894	43,23,030	2,59,382
		15	4821	OTH	3,39,384	6,35,835	79,479
		16	7310	OTH	3,20,212	1,30,07,155	16,25,894

2. Section 140 of the CGST Act, 2017 allows a registered person to take Cenvat credit of eligible duties carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law within such time and in such manner as may be prescribed subject to the conditions specified therein. The Explanations 1 & 2, below the said Section defines “eligible duties” the credit of which can be carried forward. As per rule 117, the tax payer is required to file TRAN-1.

3. Further, the proviso to section 140 of the CGST Act read as under; Provided that the registered person shall not be allowed to take credit unless

the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under the Act.

(b) Section 16 of the CGST Act, 2017 prescribed eligibility and conditions for taking input tax credit — (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person. (2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other taxpaying documents as may be prescribed;

In terms of Section 16 of the CGST Act 2017, tax payers are required to possess and produce the documents for verification, whenever called for by the Department. In absence of the same, admissibility of the credit cannot be established, and in absence of the same eligibility/admissibility of the credit cannot be established. As per rule 121 of CGST Rules, the amount credited under rule 117 of CGST Rules 2017, is to be verified and proceedings under Section 73 & 74 can be initiated in respect of credit wrongly availed.

4. It appeared that, in order to ascertain/verify the admissibility of the transitional credit availed, the Tax Payer was requested by Division office vide letter dated 23.12.2021 to submit the documents based on which they have availed the said transitional credit in TRAN-1, however the Tax Payer did not respond to the aforesaid communication. As the admissibility of transactional credit claimed by the tax payer could not be verified, an intimation dated 03.01.2022 (Form GST DRC 01A) of tax ascertained as being payable under Section 73(5)/74(5) of the CGST Act, 2017 read with Rule 142(1A) of the CGST Rules, 2017 was issued to the taxpayer to submit the information by 1600 Hrs on 07.01.2022. However, the taxpayer never reverted to the repeated requests of the department for submission of documents.

5. As the Taxpayer has failed to submit the required documents, it appears that the transitional credit amounting to Rs. 1,19,04,179/- availed by them is not admissible to them and the same requires to be recovered from them under the provisions of Section 74(1) of the CGST Act, 2017 read with Rule 121 of the CGST Rules, 2017 along with applicable interest under Section 50(1) of the CGST Act, 2017.

6. It further appears that by not providing the documents called for, the Taxpayer has intentionally suppressed the information from the department. Thus, the taxable person appears to have violated the provisions of Section 140 of the CGST Act, 2017 and rendered themselves liable for penal action under the provisions of Section 74 of the CGST Act, 2017.

7. It would be relevant here to mention that in terms of the provisions of Section 155 of the CGST Act, 2017, the onus to prove admissibility of the credit availed lies on the taxable person. Text of the said Section is reproduced as under.

Section 155: Burden of proof .— Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

In view of the above position of law, the burden to prove admissibility of the credit availed under Tran-I rests on the taxable person and by not replying to the letter of the Range Officer and intimation under Form GST DRC 01A, the taxable person have not discharged the said burden.

8. The government has, from the very beginning, placed complete trust on the taxable person so far as tax is concerned and accordingly, measures like Self-assessment, based on mutual trust and confidence are in place. From the evidence, it appears that the said taxable person had deliberately taken transitional credit of Central Excise/Service Tax, amounting to Rs 2,94,42,874/- in their electronic Credit ledger without the necessary duty paying documents and there is suppression of facts involved. Therefore, the tax credit taken is required to be recovered invoking Section 74(1) of CGST Act, 2017 and they are also required to be imposed a penalty of equal amount of duty credit under said Section 74(1). The sub section (1) of Section 74 is reproduced below:

Determination SECTION 74. of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts. — (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

9. Therefore, a show cause notice F.No. CGST/4-24/O&A/Cargil/21-22 dated 23.08.2022 was issued to M/s. CARGIL INDIA PRIVATE LIMITED, by which they were called upon to show cause to the Additional Commissioner, Central Goods & Services Tax, having his office at 1STFLOOR, GST BHAVAN, NR. POLYTECHNIC, AMBAVADI, AHMEDABAD-380015 as to why:

- 1) The transitional credit of input tax amounting to Rs. 1,19,04,179/- (Rupees One Crore Nineteen Lakh Four Thousand One Hundred Seventy Nine Only) wrongly carried forward and utilized by them, should not be demanded and recovered from them, under the provisions of Section 74(1) of the CGST Act read with the provisions of Rule 121 of the CGST Rules;
- 2) Interest should not be charged and recovered from them under the provisions of Section 50 of the CGST Act; and
- 3) Penalty should not be imposed on them under the provisions of Section 74 of the CGST Act on the grounds discussed herein above.

10. It is further informed that in terms of **sub section (8) of Section 74** of CGST Act, 2017, where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

DEFENSE SUBMISSION

11. The tax payer submitted their defense reply vide letter dated 30.05.2022 wherein they submitted that they had visited the office of the Jurisdictional Superintendent on 27.04.2022 for taking adjournment. Further submitted that they are providing details of stock held and declared in table 7A of Tran-1 return alongwith soft copies of all invoices, L.R. copies and stock ledger for verification of Tran-1 credit to this office as well as to Division office.

PERSONAL HEARING

12. Personal hearing was held in virtual mode on 22.08.2022 when Shri Rushabh Prajapati, Advocate, appeared for the party and stated that apparently no verification was conducted by range office. The party will be submitting the invoices in soft copy form. Shri Rushabh Prajapati requested to get the verification conducted. Further if required, party will also submit the invoices/related documents in hard copy.

DISCUSSION & FINDING

13. I have carefully gone through the facts of the case on record and the submissions made by the noticee. On recapitulating, I find that the issue involved in the present show cause notice, is related to admissibility of credit taken in TRAN-1 filed by the noticee. The issue is that the noticee has taken transitional credit of Central Excise/ Service Tax amounting to Rs. 1,19,04,179/- under Section 140 of the CGST Act 2017 read with rule 117 of CGST Rules 2017 by entry 7A in table 7(a) of Tran-1 return filed on 26.10.2017.

13.A Now with regard to the demand of Rs. 1,19,04,179/- I find that the noticee has declared/taken transitional credit of Rs. 1,19,04,179/-. As per Section 140, the transitional mechanism for carrying forward the credit pending with the erstwhile registered persons or who was not liable to be registered under the existing law, to the GST regime. The details of the Section 140 of the CGST Act 2017 are reproduced herewith:-

"140. (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—

- (i) where the said amount of credit is not admissible as input tax credit under this Act; or*
- (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or*
- (iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.*

(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act;

Explanation.—For the purposes of this sub-section, the expression “unavailed CENVAT credit” means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing work contract services

and was availing of the benefit of notification No. 26/2012-Service Tax, dated 20th June, 2012 or the first stage dealer or a second stage dealer or a registered importer or a depot of manufacturer, shall be entitled to take in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi finished or finished [goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions namely :-

- (i) Such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- (ii) the said registered person is eligible for input tax credit on such inputs under this Act;
- (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;
- (iv) Such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and
- (v) The supplier of the services is not eligible for any abatement under this Act:

Provided that where a registered person other than manufacturer or supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty under the existing law in respect of such inputs, then, such registered person shall, subject to such conditions, limitations and safeguard as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

(4) A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 (1 of 1944) or provision of taxable as well as exempted goods under Chapter V of the Finance Act, 1994 (32 of 1994), but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,--

(a) the amount of CENVAT credit carried forward in return furnished under the existing law by him in accordance with the provisions of sub section (1); and

(b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with provisions of sub section (3).

13B Now let me look into the provision of law that determines eligibility and conditions for taking input tax credit.

Section 16 of the CGST Act provides as under:

SECTION 16. Eligibility and conditions for taking input tax credit. — (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

[(aa) the details of the invoice or debit note referred to in) clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]

(b) he has received the goods or services or both.

[Explanation. — For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services —

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

(c) subject to the provisions of [section 41 or section 43A], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39 :

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment :

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed :

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or [* * *] debit note pertains or furnishing of the relevant annual return, whichever is earlier :

[Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]

13C. From the perusal of the above provision of law it is evident that under provision of Section 140, a registered person, shall be entitled to take in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi finished or finished on the appointed day, subject to possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs.

Further under provision of Section 16 (2)(a) a registered person shall, be entitled to take credit of input tax subject to conditions that he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.

13.D In the instant case, I observe, the noticee has taken transitional credit of Central Excise/ Service Tax amounting to Rs. 1,19,04,179/- under Section 140 of the CGST Act 2017 read with rule 117 of CGST Rules 2017 by entry 7A in table 7(a) of Tran-1 return filed on 26.10.2017. The description of entry 7A shown as "Where duty paid invoices [including Credit Transfer Documents(CTD)] are available". The entire credit was taken on basis of Invoices. It appeared that taxable person did not submit the relevant

documents initially when called for, to verify admissibility of transitional credit claimed by them. In the absence of the requisite documents, it was not possible to ascertain admissibility of transitional credit claimed by them.

The law, as provided under Section 140(4)(b) of CGST Act 2017 read with section 16 of CGST Act 2017, are unambiguous and crystal clear that the credit admissible is only when the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs.

13E During the course of personal hearing on 22.08.2022, M/s. CARGIL INDIA PRIVATE LIMITED, Shri Rushabh Prajapati, Advocate, appeared for the party. He had submitted soft copy of entire invoices on which Credit was claimed in Tran-1 return and assure to produce hard copies of invoices if required for verification. He had requested for verification of the invoices/documents.

13.F The jurisdictional Officer is the competent authority to examine/ verify the correctness /admissibility of documents submitted for taking credit. I observe, that if the taxpayer have provided all the documents for verification. The jurisdictional Officer could have verified the same to ascertain admissibility of the input tax credit. However the taxpayer have submitted all the documents during the personal hearing held on 22.07.2022.

13G In order to ascertain admissibility of credit mentioning in the Tran-1, the document/ invoices submitted by the taxpayer were sent for verification to the Jurisdictional Deputy/Assistant Commissioner, Div.-IV, CGST, Ahmedabad South on dt.23.08.2022. I find that the verification of document to ascertain admissibility of the credit was verified by the Deputy Commissioner, Central Excise Div.-IV, Ahmedabad South vide letter no.CGST/WS04/TRAN-1/O&A/2021-22 dated 07.10.2022. He reported that during verification of claim of transitional credit of Rs. 1,19,04,179/-, it appears that the said tax payer is involved in manufacturing both excisable as well as exempted goods. The tax payer has not claimed any Tran-1 credit by way of Er-1 return in table 5(a) for excisable goods nor on capital goods in table 6(a). The said claim appears to be filed by them under section 140(4) read with section 140(3) of the CGST Act,2017 with reference to only input stocks held by them as on 30.06.2022 which is admissible subjected to availability of tax/duty paying invoices. The Deputy Commissioner, Div.-IV, CGST, Ahmedabad South further reported that ITC amounting to Rs.16,21,426/- is found inadmissible. The inadmissible credit of Rs. 16,21,426/- involves ITC of Rs.9793/- as excess credit claimed in Tran-1 compare to total claimed as per stock summary and the remaining credit of Rs.16,11,633/- is availed on input service invoices (Job work Invoices). Since the credit on input service is not available under section 140(4)/140(3) of the CGST Act,2017 under table 7a of the Tran-1 return which covers only credit on input goods.

Summary sheet of the Deputy Commissioner, Central Excise Div.-IV, Ahmedabad South is mentioned as below :-

Sl No	category	claimed
1	PACKING MATERIAL FILE	3888474
2	In house Jar	77501
3	CHEMICALS FILE	1291285
4	ENG SPARES	759205
5	By Product	2523666
6	FG 1cku	1437091
7	Bulk 1cku	125633
8	FG CFA location	1656700
9	PM Tooling location	134831
10	Total claimed as per stock summary	11894386
11	Total claimed as per TRAN-1	11904179
	Excess credit (Item No. 11 minus Item No. 10)	9793

Upon verification on the basis of submitted copy of invoices, it is found that they have taken credit of Rs. 16,11,633/- on job work which is an **input service** availed by them from a single unit named M/s Paras Enterprise and being an input service, same is not available under Section 140(4)/140(3) of the CGST Act, 2017 under table 7a of the TRAN-1 return which covers only input goods. Hence, it is inadmissible. Details of their claim vis-à-vis its admissibility are as under:

Sl. No.	category	Total claimed as per stock summary	inadmissible	admissible
1	PACKING MATERIAL FILE	3888474	0	3888474
2	In house Jar	77501	0	77501
3	CHEMICALS FILE	1291285	0	1291285
4	ENG SPARES	759205	0	759205
5	By Product	2523666	0	2523666
6	FG 1cku	1437091	843658	593433
7	Bulk 1cku	125633	0	125633
8	FG CFA location	1656700	767975	888725
9	PM Tooling location	134831	0	134831
10	Total claimed as per stock summary	11894386	1611633	10282753
11	Total claimed as per TRAN-1	11904179	9793	10272960

Therefore, an excess credit of input tax amounting to Rs. 16,21,426 (i.e. 1611633+9793) is availed by them in their TRAN-1 credit claim of Rs. 1,19,04,179/- and only Rs. 1,02,72,960/- is found admissible.

13.L It appears that as per verification report submitted by Deputy Commissioner, Central Excise Div.-IV, Ahmedabad South, credit of Rs.9793/- as excess credit claimed in Tran-1 compared to total claimed as per stock summary and the credit of Rs.16,11,633/- is availed on input service invoices (Job work Invoices). Since the credit on input service is not available under section 140(4)/140(3) of the CGST Act,2017 under table 7a of the Tran-1 return which covers only credit on input goods.

The noticee has failed to prove that he is eligible for input tax credit as the burden to prove the eligibility is on the noticee as provided under Section 155 of the CGST Act 2017 which reads as under:

SECTION 155. Burden of proof. — *Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.*

When the noticee has failed to discharge the burden to prove the eligibility, the claim of ITC amounting to Rs. 16,21,426/- of the noticee is not acceptable and, therefore, I hold that the noticee is not eligible to carry forward the CENVAT credit of inputs/input services, where he could not provide tax paying documents or prove the eligibility of the credit. Thus the credit of Transitional credit of Rs. 16,21,426/- taken in TRAN-1 under Section 140 are to be disallowed and required to be recovered from them under the provisions of Section 74(1) of CGST Act 2017 read with Rule 121 of the CGST Rules, 2017.

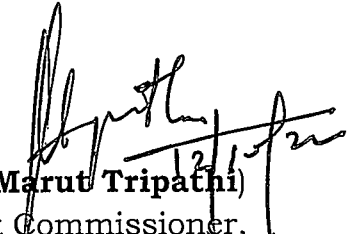
I rely upon the verification report submitted by the Deputy Commissioner, Central Excise Div.-IV, Ahmedabad South, I conclude that ITC amounting to Rs. 16,21,426/- is inadmissible and remaining amount Rs.1,02,72,960/ out of Total amount of Rs. 1,19,04,179/- is admissible.

13.M I also find that the noticee was fully aware about the fact that they were availing and utilizing the ITC which was not available to them legally under the CGST Act, 2017. This appeared to have done with intent to evade the payment of dues related to GST under the CGST Act, 2017. This fact of non-payment of dues related to GST would have remained unnoticed, if the Officers had not raised these issues. Since the noticee has carried forward Credit amount to Rs. 16,21,426/-, in TRAN-1 in contravention of the provisions of Section 140 , and Rule 121 of CGST Rules, 2017 with an intent to evade payment of tax, they have rendered themselves liable for penal action as per the provisions of Section 74(1) of CGST Act, 2017 read with Section 122 (2)(b) of CGST Act, 2017.

13N. In view of the above, I pass the following order:

ORDER

- (i) I disallow Transitional credit of Rs. 16,21,426/- out of Total amount of Rs. Rs. 1,19,04,179/- taken in TRAN-1 under Section 140(3) of the CGST Act, 2017 and order to be recovered from them, under the provisions of Section 74(1) of CGST Act 2017 read with Rule 121 of the CGST Rules, 2017.
- (ii) I confirm the demand of interest at the applicable rate under Section 50 (1) of the CGST Act 2017 on the demand of (i) to (iii) above;
- (v) I impose penalty of Rs. 16,21,426/-, under the provisions of Section 74(1) read with Section 122 (2)(b) of CGST Act, 2017. However, **in view of Section 74(11)** if the amount confirmed and interest thereon is paid **within period of thirty days from the date of receipt of this Order, the penalty shall be fifty percent** of the said amount, subject to the condition that the amount of **such reduced penalty is also paid within the said period of thirty days.**


(Marut Tripathi)
Joint Commissioner,
CGST, Ahmedabad South.

F No VI-CGST/4-24/ O&A/cargil/21-22.
By Speed Post AD

Date: .2022

M/s Cargil India Private Limited,
GDN No. 01, Punjabi Estate,
Survey No. 899/1, Village- Mouza-Aslali
Taluka- Dascroi,
Ahmedabad 382427

Copy to :

- 1) The Principal Commissioner, CGST, Ahmedabad South.
- 2) The Deputy Commissioner, Central GST, Div-IV, Ahmedabad South.
- 3) The Asstt. Commissioner, Central Tax, TAR Section, HQ, Ahmedabad South
- 4) The Superintendent, Range-IV, CGST, Div-IV, Ahmedabad South.
- ✓ 5) The Superintendent, Central Tax, Systems HQ, Ahmedabad South for uploading on the website.
- 6) Guard file.